

By: Cain

H.B. No. 1500

A BILL TO BE ENTITLED

1 AN ACT

2 relating to prohibiting abortions after detection of an unborn
3 child's heartbeat and to requirements for performing or inducing an
4 abortion; authorizing an administrative penalty; creating a
5 criminal offense.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. This Act shall be known as the Texas Heartbeat
8 Bill.

9 SECTION 2. Chapter 171, Health and Safety Code, is amended
10 by adding Subchapter H to read as follows:

11 SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

12 Sec. 171.201. DEFINITIONS. In this subchapter:

13 (1) "Fetal heartbeat" means cardiac activity or the
14 steady and repetitive rhythmic contraction of the fetal heart
15 within the gestational sac.

16 (2) "Gestational age" means the amount of time that
17 has elapsed from the first day of a woman's last menstrual period.

18 (3) "Gestational sac" means the structure comprising
19 the extraembryonic membranes that envelop the unborn child and that
20 is typically visible by ultrasound after the fourth week of
21 pregnancy.

22 (4) "Physician" means an individual licensed to
23 practice medicine in this state, including a medical doctor and a
24 doctor of osteopathic medicine.

1 (5) "Pregnancy" means the human female reproductive
2 condition that:

3 (A) begins with fertilization;

4 (B) occurs when the woman is carrying the
5 developing human offspring; and

6 (C) is calculated from the first day of the
7 woman's last menstrual period.

8 (6) "Standard medical practice" means the degree of
9 skill, care, and diligence that a physician of the same medical
10 specialty would employ in similar circumstances.

11 (7) "Unborn child" means an offspring of human beings
12 from fertilization until birth.

13 Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds,
14 according to contemporary medical research, that:

15 (1) as many as 30 percent of natural pregnancies end in
16 spontaneous miscarriage;

17 (2) less than five percent of all natural pregnancies
18 end in spontaneous miscarriage after detection of fetal cardiac
19 activity;

20 (3) over 90 percent of in vitro pregnancies survive
21 the first trimester if cardiac activity is detected in the
22 gestational sac;

23 (4) nearly 90 percent of in vitro pregnancies do not
24 survive the first trimester where cardiac activity is not detected
25 in the gestational sac;

26 (5) fetal heartbeat, therefore, has become a key
27 medical predictor that an unborn child will reach live birth;

1 (6) cardiac activity begins at a biologically
2 identifiable moment in time, normally when the fetal heart is
3 formed in the gestational sac;

4 (7) Texas has legitimate interests from the outset of
5 a woman's pregnancy in protecting the health of the woman and the
6 life of an unborn child who may be born; and

7 (8) to make an informed choice about whether to
8 continue her pregnancy, the pregnant woman has a legitimate
9 interest in knowing the likelihood of the unborn child surviving to
10 full-term birth based on the presence of cardiac activity.

11 Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT
12 REQUIRED; RECORD. (a) Except as provided by Section 171.205, a
13 physician may not intentionally perform or induce an abortion on a
14 pregnant woman unless the physician has determined, in accordance
15 with this section, whether the woman's unborn child has a
16 detectable fetal heartbeat.

17 (b) In making a determination under Subsection (a), the
18 physician must use a test that is:

19 (1) consistent with the physician's good faith
20 understanding of standard medical practice;

21 (2) consistent with rules adopted under this
22 subchapter; and

23 (3) appropriate for the estimated gestational age of
24 the unborn child and the condition of the pregnant woman and her
25 pregnancy.

26 (c) A physician making a determination under Subsection (a)
27 shall record in the pregnant woman's medical record the estimated

1 gestational age of the unborn child, the test used for detecting a
2 fetal heartbeat, the date and time of the test, and the results of
3 the test.

4 (d) The executive commissioner may adopt rules specifying
5 the appropriate tests to be used in determining the presence of a
6 fetal heartbeat based on standard medical practice.

7 Sec. 171.204. ABORTION OF UNBORN CHILD WITH DETECTABLE
8 FETAL HEARTBEAT PROHIBITED. (a) Except as provided by Section
9 171.205, a physician may not intentionally perform or induce an
10 abortion on a pregnant woman with the specific intent of causing or
11 abetting the termination of the life of the woman's unborn child if
12 the physician detected a fetal heartbeat for the unborn child under
13 Section 171.203 or failed to perform a test to detect a fetal
14 heartbeat.

15 (b) A physician does not violate this section if the
16 physician performed a test for a fetal heartbeat under Section
17 171.203 and did not detect a fetal heartbeat.

18 (c) This section does not affect the provisions of this
19 chapter that restrict or regulate an abortion by a particular
20 method or during a particular stage of pregnancy.

21 Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

22 (a) This subchapter does not apply if a physician believes a
23 medical emergency exists that prevents compliance with this
24 subchapter.

25 (b) A physician who performs or induces an abortion under
26 circumstances described by Subsection (a) shall make written
27 notations in the pregnant woman's medical record of:

1 (1) the physician's belief that a medical emergency
2 necessitated the abortion; and

3 (2) the medical condition of the pregnant woman that
4 prevented compliance with this subchapter.

5 (c) A physician performing or inducing an abortion under
6 this section shall maintain in the physician's practice records a
7 copy of the notations made under Subsection (b) until the seventh
8 anniversary of the date that the abortion is performed or induced.

9 Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This
10 subchapter does not create or recognize a right to abortion before a
11 fetal heartbeat is detected.

12 (b) This subchapter may not be construed to authorize the
13 initiation of a cause of action against or the prosecution of a
14 woman on whom an abortion is performed or induced or attempted to be
15 performed or induced in violation of this subchapter.

16 Sec. 171.207. CRIMINAL OFFENSE. (a) A person commits an
17 offense if the person violates this subchapter.

18 (b) An offense under this section is a state jail felony.

19 Sec. 171.208. ADMINISTRATIVE PENALTY. The Texas Medical
20 Board may take disciplinary action under Chapter 164, Occupations
21 Code, or assess an administrative penalty under Subchapter A,
22 Chapter 165, Occupations Code, against a person who violates this
23 subchapter.

24 Sec. 171.209. WRONGFUL DEATH ACTION. (a) A woman on whom
25 an abortion is performed or induced in violation of this subchapter
26 may file a civil action for wrongful death under Section 71.002,
27 Civil Practice and Remedies Code.

1 (b) Notwithstanding Section 71.010, Civil Practice and
2 Remedies Code, a woman who prevails in an action described by
3 Subsection (a) may:

4 (1) elect damages in the amount of \$10,000 or an amount
5 determined by the trier of fact after the consideration of evidence
6 and before final judgment; and

7 (2) recover court costs and reasonable attorney's
8 fees.

9 (c) If a physician prevails in an action described by
10 Subsection (a) and the court finds that the pleading for the action
11 violated Section 9.011, Civil Practice and Remedies Code, the court
12 shall award reasonable attorney's fees to the physician.

13 SECTION 3. Subchapter A, Chapter 171, Health and Safety
14 Code, is amended by adding Section 171.008 to read as follows:

15 Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion
16 is performed or induced on a pregnant woman because of a medical
17 emergency, the physician who performs or induces the abortion shall
18 execute a written document that certifies the abortion is necessary
19 due to a medical emergency and specifies the woman's medical
20 condition requiring the abortion.

21 (b) A physician shall:

22 (1) place the document described by Subsection (a) in
23 the pregnant woman's medical record; and

24 (2) maintain a copy of the document described by
25 Subsection (a) in the physician's practice records until the
26 seventh anniversary of the date that the document is executed.

27 SECTION 4. Section 171.012, Health and Safety Code, is

1 amended by amending Subsection (a) and adding Subsection (f) to
2 read as follows:

3 (a) Consent to an abortion is voluntary and informed only
4 if:

5 (1) the physician who is to perform the abortion
6 informs the pregnant woman on whom the abortion is to be performed
7 of:

8 (A) the physician's name;

9 (B) the particular medical risks associated with
10 the particular abortion procedure to be employed, including, when
11 medically accurate:

12 (i) the risks of infection and hemorrhage;

13 (ii) the potential danger to a subsequent
14 pregnancy and of infertility; and

15 (iii) the possibility of increased risk of
16 breast cancer following an induced abortion and the natural
17 protective effect of a completed pregnancy in avoiding breast
18 cancer;

19 (C) the probable gestational age of the unborn
20 child at the time the abortion is to be performed; and

21 (D) the medical risks associated with carrying
22 the child to term;

23 (2) the physician who is to perform the abortion or the
24 physician's agent informs the pregnant woman that:

25 (A) medical assistance benefits may be available
26 for prenatal care, childbirth, and neonatal care;

27 (B) the father is liable for assistance in the

1 support of the child without regard to whether the father has
2 offered to pay for the abortion; and

3 (C) public and private agencies provide
4 pregnancy prevention counseling and medical referrals for
5 obtaining pregnancy prevention medications or devices, including
6 emergency contraception for victims of rape or incest;

7 (3) the physician who is to perform the abortion or the
8 physician's agent:

9 (A) provides the pregnant woman with the printed
10 materials described by Section 171.014; and

11 (B) informs the pregnant woman that those
12 materials:

13 (i) have been provided by the commission
14 [~~Department of State Health Services~~];

15 (ii) are accessible on an Internet website
16 sponsored by the commission [~~department~~];

17 (iii) describe the unborn child and list
18 agencies that offer alternatives to abortion; and

19 (iv) include a list of agencies that offer
20 sonogram services at no cost to the pregnant woman;

21 (4) before any sedative or anesthesia is administered
22 to the pregnant woman and at least 24 hours before the abortion or
23 at least two hours before the abortion if the pregnant woman waives
24 this requirement by certifying that she currently lives 100 miles
25 or more from the nearest abortion provider that is a facility
26 licensed under Chapter 245 or a facility that performs more than 50
27 abortions in any 12-month period:

1 (A) the physician who is to perform the abortion
2 or an agent of the physician who is also a sonographer certified by
3 a national registry of medical sonographers performs a sonogram on
4 the pregnant woman on whom the abortion is to be performed;

5 (B) the physician who is to perform the abortion
6 displays the sonogram images in a quality consistent with current
7 medical practice in a manner that the pregnant woman may view them;

8 (C) the physician who is to perform the abortion
9 provides, in a manner understandable to a layperson, a verbal
10 explanation of the results of the sonogram images, including a
11 medical description of the dimensions of the embryo or fetus, the
12 presence of cardiac activity, and the presence of external members
13 and internal organs; ~~and~~

14 (D) the physician who is to perform the abortion
15 or an agent of the physician who is also a sonographer certified by
16 a national registry of medical sonographers makes audible the heart
17 auscultation for the pregnant woman to hear, if present, in a
18 quality consistent with current medical practice and provides, in a
19 manner understandable to a layperson, a simultaneous verbal
20 explanation of the heart auscultation; and

21 (E) if a fetal heartbeat is detected under
22 Section 171.203, the physician who is to perform the abortion
23 informs the woman in writing of the statistical probability of
24 bringing the unborn child to term:

25 (i) to the best of the physician's
26 knowledge, based on the gestational age of the unborn child; or

27 (ii) as provided by commission rule;

1 (5) before receiving a sonogram under Subdivision
2 (4)(A) and before the abortion is performed and before any sedative
3 or anesthesia is administered, the pregnant woman completes and
4 certifies with her signature an election form that states as
5 follows:

6 "ABORTION AND SONOGRAM ELECTION

7 (1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY
8 SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN
9 PROVIDED AND EXPLAINED TO ME.

10 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN
11 ABORTION.

12 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR
13 TO RECEIVING AN ABORTION.

14 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE
15 SONOGRAM IMAGES.

16 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE
17 HEARTBEAT.

18 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN
19 EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO
20 ONE OF THE FOLLOWING:

21 ___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT,
22 INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN
23 REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN
24 REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT
25 RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

26 ___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE
27 WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY

1 CODE.

2 _____ MY FETUS HAS AN IRREVERSIBLE MEDICAL CONDITION OR
3 ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND
4 DOCUMENTED IN MY MEDICAL FILE.

5 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND
6 WITHOUT COERCION.

7 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE
8 NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER
9 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE
10 THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

11 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR
12 MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED
13 UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS
14 IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS
15 AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION
16 PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

17 _____

18 SIGNATURE DATE";

19 (6) before the abortion is performed, the physician
20 who is to perform the abortion receives a copy of the signed,
21 written certification required by Subdivision (5); and

22 (7) the pregnant woman is provided the name of each
23 person who provides or explains the information required under this
24 subsection.

25 (f) The executive commissioner may adopt rules that specify
26 the information required under Subsection (a)(4)(E) regarding the
27 statistical probability of bringing an unborn child to term based

1 on the gestational age of the child. The information in the rules
2 must be based on available medical evidence.

3 SECTION 5. Section 245.011(c), Health and Safety Code, is
4 amended to read as follows:

5 (c) The report must include:

6 (1) whether the abortion facility at which the
7 abortion is performed is licensed under this chapter;

8 (2) the patient's year of birth, race, marital status,
9 and state and county of residence;

10 (3) the type of abortion procedure;

11 (4) the date the abortion was performed;

12 (5) whether the patient survived the abortion, and if
13 the patient did not survive, the cause of death;

14 (6) the probable post-fertilization age of the unborn
15 child based on the best medical judgment of the attending physician
16 at the time of the procedure;

17 (7) the date, if known, of the patient's last menstrual
18 cycle;

19 (8) the number of previous live births of the patient;

20 [~~and~~]

21 (9) the number of previous induced abortions of the
22 patient;

23 (10) whether the abortion was performed or induced
24 because of a medical emergency and any medical condition of the
25 pregnant woman that required the abortion;

26 (11) whether the physician made a determination of the
27 presence of a fetal heartbeat in accordance with Section 171.203;

1 and

2 (12) whether the physician performed or induced the
3 abortion under circumstances described by Section 171.205.

4 SECTION 6. (a) After the issuance of a decision by the
5 United States Supreme Court overruling any prior ruling that
6 prohibits states from wholly or partly prohibiting abortion, the
7 issuance of any court order or judgment restoring, expanding, or
8 clarifying the authority of states to wholly or partly prohibit or
9 regulate abortion, or the effective date of an amendment to the
10 United States Constitution restoring, expanding, or clarifying the
11 authority of states to wholly or partly prohibit or regulate
12 abortion, the attorney general may apply to the appropriate state
13 or federal court for:

14 (1) a declaration that any one or more provisions of
15 this Act are constitutional; or

16 (2) a judgment or order lifting an injunction against
17 the enforcement of any one or more provisions of this Act.

18 (b) If the attorney general fails to apply for the relief
19 described by Subsection (a) of this section not later than the 30th
20 day after the date an event described by that subsection occurs, any
21 district attorney may apply to the appropriate state or federal
22 court for the relief described by that subsection.

23 SECTION 7. (a) It is the intent of the legislature that if a
24 court suspends enforcement of any provision of this Act, the
25 suspension is not to be regarded as repealing that provision.

26 (b) If any provision of this Act is held invalid or if the
27 application of any provision to any person or circumstance is held

1 invalid, the invalidity of that provision or application does not
2 affect any other provision or applications of this Act that can be
3 given effect without the invalid provision or application, and to
4 this end, the provisions of this Act are severable. It is the
5 intent of the legislature that any invalidity or potential
6 invalidity of a provision of this Act does not impair the immediate
7 and continuing enforceability of the remaining provisions. It is
8 furthermore the intent of the legislature that the provisions of
9 this Act do not have the effect of repealing or limiting any other
10 laws of this state.

11 SECTION 8. The change in law made by this Act applies only
12 to an abortion performed or induced on or after the effective date
13 of this Act.

14 SECTION 9. This Act takes effect September 1, 2019.